

OPINION
74-368

March 14, 1974 (OPINION)

Mr. Raymond R. Rund
State's Attorney
Steele County
Finley, ND 58230

Dear Mr. Rund:

This is in response to your letter of March 4, 1974, in regard to indebtedness of a specified rural fire protection district.

You call our attention to the provisions of Section 18-10-08 of the North Dakota Century Code and particularly the sentence thereof providing:

"Within the limits herein authorized, the district shall have power to borrow money at a rate not in excess of six percent per annum and to issue appropriate evidence of indebtedness thereof."

You inform us that this rural fire protection district is now proposing to build a new fire station and wants to finance the payment thereof and "issue appropriate evidence of indebtedness thereof". You state that this poses several questions, which the district would like to have answered. You state said questions as follows:

1. What is an 'appropriate evidence of indebtedness' as is stated in this statute? Can 'Revenue Bonds' under Chapter 40-35 North Dakota Century Code be issued by the district to pay for the fire station and the items purchased therefor? Can 'Certificates of Indebtedness' be issued therefor? Can the District hold an election and bond under Chapter 21-03 therefor? Can the district borrow money on a plain note therefor?
2. Since the limit of indebtedness of the district cannot exceed an amount that may be payable from ten annual maximum tax levies of 5 mills per year, what maturity must be adhered to repay the indebtedness? Must the debt be paid back within 10 years from the date of the indebtedness?
3. At what valuation and levy of the district is this limit of indebtedness to be determined, to assure the validity of the 'appropriate evidence of indebtedness' that will be issued? Is it the assessed valuation of the district at the time of the issuance of the indebtedness, or the average assessed valuation of the district over the 10 year period still to be experienced after the issuance of the indebtedness that controls?"

We appreciate your giving us your impressions on this matter and

particularly your calling to our attention the provision of subsection 7 of Section 18-10-06 that:

"18-10-06. POWERS OF BOARD OF DIRECTORS. The board of directors shall have the following general powers:

* * *

7. To incur indebtedness on behalf of the district within the limits prescribed by Section 18-10-08, and to authorize the issuance of evidences of such indebtedness permitted under Section 18-10-08 and to pledge any real or personal property owned or acquired by the district as security for the same.

* * * "

We do not find specifically the phrase "appropriate evidence of indebtedness" in "Black's Law Dictionary, Revised Fourth Edition, through we do note the phrase, Evidence of debt, defined as A term applied to written instruments or securities for the payment of money, importing on their face the existence of a debt.* * * ", and we do find the first definition given for the term "bond" to be: "A certificate or evidence of a debt. * * *" "Words and Phrases", Permanent Edition, Volume 15 A 39-42, and Supplement 6-8 does give a number of citations with regard to same, including State v. Weisser, N.D. 161 N.W.2d. 360, 365, and State v. Davis, N.D. 131 N.W.2d. 730. From this material, we would generally feel that "evidence of indebtedness" is a rather broad generic term, including in appropriate circumstances such items as "bonds", "notes", etc.

Looking to your first question, we would agree with the suggestion that it could be a "Note", though we are not certain that a mortgage evidencing only the security for an obligation, rather than the obligation itself, represented by the note would fall within the meaning of the term "Evidence of Indebtedness". However, in view of the provision of Section 18-10-06 authorizing the pledge of real or personal property for security of borrowed money, we would agree that a promissory note, secured by mortgage on building and site, would be a proper method of borrowing money under the statutory Sections considered.

We do not find authority under Chapter 18-10 or Title 40 for rural fire protection districts, to issue "revenue bonds" under Chapter 40-35 of the North Dakota Century Code. While the power granted to incur indebtedness are stated very broadly, and while conceivably in proper circumstances revenues derived from a facility created might be worked into a debt payment program, we would doubt that a rural fire protection district would have authority to create an "obligation" payable solely from revenues derived from the operation of a district facility. Possibly, if something similar to a revenue bond type obligation were desired, something could be accomplished by the creation of a private holding corporation though we would want to examine into the specific details of a proposed project to either generally approving or disapproving any form of rural fire protection district "revenue" bond type projects.

As would be indicated by our previous comments on generally accepted definitions, it is conceivable that the district's "appropriate evidence of indebtedness" might be in the form of a "certificate" that an "indebtedness" exists, however, we think it obvious under the terms of 21-02 of the North Dakota Century Code that the "certificates of indebtedness" there rereferred to are a completely different type of obligation than is contemplated by the provisions of Sections 18-10-06 and 18-10-08 of the North Dakota Century Code.

We also think it obvious that the district is not required to hold an election to issue bonds pursuant to Chapter 21-03 of the North Dakota Century Code, and would doubt that the costs of such an election procedure would be a legal purpose for the expenditure of rural fire protection district funds.

In response to the last phase of your first question, it would appear to us that the "appropriate evidence of indebtedness" could consist of an instrument such as you denominate a "plain note" though the usual form of printed promissory note might require some changes to conform to the express provisions of Sections 18-10-06 and 18-10-08. Likewise, we would assume that the district could issue instruments denominated "bonds" following quite closely the elements of form prescribed by Chapter 21-03 of the North Dakota Century Code, though with appropriate variations to reflect the procedures and authority expressed in Chapter 18-10.

In response to your second question we do note that the statutes do not specifically prescribe a maturity date for the obligations to be incurred thereunder. We would think it obvious, however, that the statute was not designed to authorize a board to incur a debt maturing in, for example, 100 years from the date of making. We also note that there is a reluctance to construe statutes as authorizing a current board to obligate future boards or officers beyond the express terms of the authorizing statutes. On such basis we would assume that an absolutely legal maturity for the obligations incurred under Sections 18-10-06 and 18-10-08 would be as rapidly as the "ten annual maximum tax levies" could be collected. We should mention, however, that the limit in amount is expressed as "maximum levies" and apparently allows indebtedness up to such full amount. It seems doubtful that the legislature intended that the district would not have operating expenses during the period, it was paying its indebtedness, so do feel the statute is not clear in this respect. However, we find no guidelines for a maximum maturity period, feel that one is essential, and hesitate to suggest something in addition to the statutory specifications in this regard. We could perhaps draw a parallel to the provisions of Chapter 21-03 in this regard though as both you and we have noted, there are no statutory cross-references between these Chapters of the North Dakota Century Code.

In response to your third question, we might comment generally that usually in the incurring of general obligation indebtedness, (pursuant to Chapter 21-03 of the North Dakota Century Code) debt limits are computed as of the date the indebtedness is incurred. (In this regard see cases cited under Section 183 of the North Dakota Constitution). We do note, however, that Section 18-10-08 is worded differently than said Section 183 of the North Dakota Constitution

and Section 21-03-04 of the North Dakota Century Code as amended to date. In view of the current inflationary trend it seems doubtful that the question would come up, if debt limit were computed on the basis of ten times the usual current annual levy. We would assume, however, that an investor wanting further assurances in view of the specific wording of this debt limit provision, also may wish to take advantage of the provisions of subsection 7 of Section 18-10-06 authorizing the pledge of any real or personal property owned or acquired by the district.

We hope the within and foregoing will be sufficient for your purposes. While we feel these statutory provisions could be greatly clarified by legislative amendment or judicial precedent, we also do feel that where bonds or other forms of evidences of indebtedness are issued pursuant to the cited statutory provisions, particularly where limited in time to the period necessary to collect ten annual levies, in an amount not exceeding ten times a usual current year's levy, and particularly where such bonds or other evidences of indebtedness are further secured by the pledge of property, a lending institution does receive a legally enforceable obligation against the fire protection district in exchange for parting with its money.

Sincerely yours,

Allen I. Olson

Attorney General